

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

REC'D 28 DEC 2004

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Applicant's or agent's file reference	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/11018	International filing date (day/month/year) 06.10.2003	Priority date (day/month/year) 10.10.2002
International Patent Classification (IPC) or both national classification and IPC B05B11/00		
Applicant MONSANTO EUROPE S.A. et al		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of sheets.

- This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 07.05.2004	Date of completion of this report 28.12.2004
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Roldán, J Telephone No. +31 70 340-2740 

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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/EP 03/11018**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-13 as originally filed

Claims, Numbers

1-18 as originally filed

Drawings, Sheets

1/15-15/15 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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**INTERNATIONAL PRELIMINARY
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International application No. **PCT/EP 03/11018**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-17
	No: Claims	1,18
Inventive step (IS)	Yes: Claims	2-11
	No: Claims	1,12-18
Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

2. Citations and explanations

see separate sheet

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**INTERNATIONAL PRELIMINARY
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International application No. PCT/EP 03/11018

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following document:
US 4 437 587 (DUERING WALTER) 20 March 1984.

1. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT. Document US4437587 discloses (the references in parentheses applying to this document):

A dispenser comprising a container (1) for holding a product to be dispensed and a dispensing mechanism (5,6), characterized in that the container is connected to the dispensing mechanism by way of a siphon (2,3,4).

2. The combination of the features of dependent claim 2 is neither known from, nor rendered obvious by, the available prior art. The reasons are as follows: none of the documents cited in the search report disclose or suggest the features present on said claim 2.

2.1 Claims 3-11 are dependent on claim 2 and as such also meet the requirements of the PCT with respect to novelty and inventive step.

3. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 12 does not involve an inventive step in the sense of Article 33(3) PCT. The document D2 is regarded as being the closest prior art to the subject-matter of claim 12, and discloses (the references in parentheses applying to this document):

A dispenser comprising a container body (1) having a bottom (11), walls (10) and opposite side (2,3), wherein said container is connected by said opposite side to the external chamber (4) of a coaxial siphon, and the internal chamber (6) bears a sprayer (18, see fig. 8).

The subject-matter of claim 12 therefore differs from this known dispenser in that the sprayer is a trigger sprayer. Said sprayer is merely one of several straightforward possibilities (i.e. kinds of sprayers) from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve

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**INTERNATIONAL PRELIMINARY
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International application No. PCT/EP 03/11018

the problem posed of improving spraying.

4. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 13-15 does not involve an inventive step in the sense of Article 33(3) PCT.

4.1 The device resulting from the combination above (point 3) would also have the features of claim 13, since when attaching the trigger sprayer, the dip tube has to be introduced through the internal chamber of the siphon (see Figs 1 and 9 in US 4 437 587), whereby claim 13 also lacks an inventive step in the sense of Article 33(3) PCT.

4.2 The subject-matter of claim 14 consists in the selection of an angle from a possible range. Such a selection can only be regarded as inventive, if the angle presents unexpected effects or properties in relation to the rest of the range. However, no such effects or properties are indicated in the application, indeed the disclosure in page 13, paragraph 2 does not clearly show which problem is overcome. Hence, no inventive step is present in the subject-matter of claim 14.

4.3 The feature "coaxial siphon shaped as handgrip" of claim 15 is already known from US4437587 (see Fig. 1 in said document), whereby claim 15 also lacks an inventive step.

5. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 16 and 17 does not involve an inventive step in the sense of Article 33(3) PCT. The features "precompression system" and "label" are merely one of several straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed of delivering the content of the bottle and labelling the same.

6. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 18 is not new in the sense of Article 33(2) PCT. The dispenser in US 4 437 587 also includes an opening for refilling (by removal of cap 5) in its side opposite to said bottom (i.e its top).

7. Use as dispensing device.

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